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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
ESSEX COUNTY

STATE OF NEW JERSEY, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

vs.

SCIENTIFIC CHEMICAL PROCESSING, INC.,
a corporation; ENERGALL, INC., a
corporation; PRESTO INC., a corporation;
INMAR ASSOCIATES, INC., a corporation;
LEIF R. SIGMOND and DOMINICK PRESTO,
a partnership, t/a SIGMOND AND PRESTO;
LEIF R. SIGMOND, an individual; HERBERT
G. CASE, an individual; MACK BARNES,
an individual; DOMINICK PRESTO, an
individual, MARVIN MAHAN, an
individual,

Defendants.

DOCKET NO.

Civil Action

VERIFIED COMPLAINT

Plaintiff, State of New Jersey, Department of Environmental
Protection (hereinafter "DEP") with principal offices at John Fitch

345767



SCIENTIFIC CHEMICAL PROCESSING, CARLSTADT, BERGEN

On May 3, 1983, the Department of Environmental Protection filed suit against Scientific Chemical Processing, Inc., Inman Associates, Inc. and Marvin Mahan, Leif Sigmond, Herbert G. Case and Mack Barnes, individually, to require the defendants to remedy the environmental violations at the Carlstadt site. Simultaneously, the Department filed suit against the same parties plus others to require the defendants to clean up a site at 411 Wilson Avenue in Newark, New Jersey.

Enclosed for your information is a copy of the Order to Show Cause and Verified Complaint filed in this matter.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

189 WASHINGTON ST
NEWARK, NEW JERSEY 07102
(201) 646 6186

OFFICE OF ADMINISTRATIVE LAW JUDGE

TO: Daniel J. O'Hern, Commissioner
Dept. Environmental Protection
1301 Parkside Ave.
Trenton

RE: Administrative Hearing on
Scientific Chemical Processing,
Inc., and Presto, Inc.

OAL DMT. NO. EDW 1710-79

Pursuant to N.J.S.A. 52:14B-10(c), we hereby file with the Agency Head the Initial Decision in this matter. Kindly note that the above statute requires that the parties receive a copy of the Initial Decision received as to deliver by the Agency Head. Would you, therefore, sign the Initial Decision as to receipt, keeping a copy for yourself, and give the original back to our messenger so that we may serve the parties with an Initial Decision receipted by the Agency Head.

As per said statute, the forty-five (45) day period for Agency Head runs from date of receipt by the Agency Head.

DATE: _____

RONALD L. PARKER, ESQ.
Director, Judicial Management

RIP/mlr
OAL - a/21 - (8/13/79)

EXHIBIT "A"

BEFORE THE HONORABLE LEWIS P. GOLDSHORE, ALJ c/b:

I. INTRODUCTION

In accordance with the applicable statutory provision, N.J.S.A. 52:14F-8(b) and N.J.S.A. 52:14E-10(c), the Department of Environmental Protection [herein the "DEP"] elected not to hear and determine this matter directly, and a request was transmitted to the Office of Administrative Law for the assignment of an administrative law judge to conduct the hearing (OAL-3). As a result of this request, Lewis P. Goldshore, Esq., was appointed by the Director of the Office of Administrative Law as an administrative law judge, on a case basis, to conduct the administrative hearing in the instant matter.

Notice was provided by telegram to the parties that a pre-hearing conference was to be held on June 26, 1979. At the conclusion of this conference, a Pre-hearing Order [OAL-10] was entered. Thereafter, hearings were held on June 27, and 28, July 3, 5, 6, 9, 10, 13, 16 and 17, 1979. References to the transcript of the hearings shall be as follows: June 27, "1T"; June 28, "2T"; July 3, "3T"; July 5, "4T"; July 6, "5T"; July 9, "6T"; July 10, "7T"; July 13, "8T"; July 16, morning session, "9aT"; July 16, afternoon session, "9bT"; July 17, "10T". References to the exhibits introduced in evidence shall be as follows: Scientific Chemical Processing, Inc., et al., exhibits, "SCP-1 et seq."; Department of Environmental Protection exhibits, "DEP-1 et seq."; and Office of Administrative Law exhibits, "OAL-1 et seq."

II. NATURE OF PROCEEDINGS

This contested case arises from an Order [OAL-1] issued by the New Jersey Superior Court, Appellate Division, on June 15, 1979, in an action entitled: In re: Order Denying Temporary Operating Authorization for Facilities Owned and Operated by Energall, Inc., Scientific Chemical Processing, Inc. and Presto, Inc., Docket No. AM-678-78. That Order provided in pertinent part:

"A stay is denied conditioned strictly upon faithful compliance by the Department of Environmental Protection (DEP) with the following requirements:

Robert C. Flett
74 Palisades Avenue
Jersey City, NJ 07306
Telephone: (201) 659-7043

Born January 9, 1933

Attended Jersey City school system; after military service, graduated Central Evening High School in Newark, NJ.

Married, with eight children and two grandchildren.

Job History:

10/80 - 6/81 - Syncon Resins, Inc., Jacobous Avenue, South Kearny, NJ

Second shift supervisor, concerned with the manufacture of synthetic resins. Job duties included quality control for the manufacture of latex resins, as well as responsibility for supervision of the loading and unloading of raw materials and finished products. Laboratory duties consisted of titration and viscosities; chemicals dealt with were dibutylmaleate, vinyl acetate monomer and others. Left when company went bankrupt.

1/78 - 6/80 - Presto, Inc., 411 Wilson Avenue, Newark, NJ

Worked in the recovery of chlorinated solvents, namely trichloroethylene, methylene chloride, 1-1-1 trichloroethane, perchlorethylene and DuPont Cyrel Colvent (a mixture of perchlorethylene and butanol). Duties were analysis of incoming products as to suitability by standard test methods such as distillation range, specific gravity, flammability and gas chromatography. Ran distillation on day shift and supervised individuals on the second and third shifts. Left their employ when Presto appeared to be going out of business.

Dr. Buchanan explained that a "special waste facility" was one involved in the handling, processing, treatment, reclaiming or disposal of chemical and hazardous waste (1T37-18 to 22). He indicated that in reviewing applications for registration of such facilities, the DEP is concerned with the detailed engineering designs to be assured that incompatible materials will not be mixed; the spill control and prevention aspects as well as cleanup operations; the emergency contingency plans; and the environmental impact assessment (1T38-5 to 39-6). He emphasized the importance of the manifest system, which provides for the "cradle to grave" monitoring of chemical wastes in the State (1T46-15 to 49-23). Manifest documents submitted to the DEP by Scientific Chemical Processing, Inc. [herein SCP], as well as by the other appellant corporations, indicate that they handle hazardous chemicals with flammable, corrosive and irritant properties (1T63-2 to 14). This was stipulated to by appellant's counsel [1T64-16 to 19], and not disputed during the course of the hearings.

The testimony of this and other witnesses also indicated the close management and operational relationship among the three (3) appellant corporations. Presto, Inc., primarily handles chlorinated solvents that have toxic properties. Energall, Inc. receives wastes for processing from SCP in Newark [1T82-10 to 83-16], and SCP redistills solvent type materials of various organic chemical residues to produce other byproducts (1T85-12 to 16). Mack Barnes was identified as the primary administrative authority for SCP in Carlstadt, while Herbert Case, Jr. functioned in a similar capacity for SCP in Newark. Leif R. Sigmond was primary administrator for Energall, Inc. (1T89 to 91).

Dr. Buchanan also explained the purpose of the temporary operation authorizations [TOA's] issued to the appellant facilities on May 9, 1978 (DEP-1 through DEP-4). He stated that the TOA's were issued to provide for an interim period of operation, prior to full approval being granted, while engineering plans were prepared and submitted to the DEP (1T98-9 to 18). The TOA's were subject to the recipients compliance with DEP rules and regulations, the handling of certain specified wastes, and the submission to the DEP of engineering designs and reports within four (4) months (1T99-7 to 14). In any event, the TOA's provided that they would expire on April 30, 1979 (1T100-19 to 21). The engineering designs required to be filed within four (4) months were not filed in a timely fashion by the appellants. In November of 1978, Dr. Buchanan met with Leif

DEP shall immediately schedule and within seven days of its receipt of this order or the first business day thereafter commence a plenary hearing respecting its failure to renew a Temporary Operating Authorization for Energall, Inc., Presto, Inc. and Scientific Chemical Processing, Inc. (hereafter corporations) and its directions by mailgram and correspondence that handling of "special waste" or "solid waste disposal" must cease after April 30, 1979."

On June 27, 1979, hearings commenced respecting the DEP's failure to renew a Temporary Operating Authorization for Energall, Inc., Presto, Inc., and Scientific Chemical Processing, Inc. [herein collectively referred to as "appellants"] and said department's written direction that handling of "special waste" or "solid waste disposal" must cease after April 30, 1979. As specified in the pre-hearing order, the DEP proceeded with its case first. The department's witnesses were presented at hearings held on June 27 and 28, July 3, 5, 6, 9 and 10, 1979. In support of the DEP's case, fifty-four (54) separately numbered exhibits [DEP-1 through DEP-55, exclusive of DEP-18] were marked and received in evidence. Following the close of the administrative agency's case, appellants requested and were granted a two (2) day adjournment for the purpose of preparing their presentation. Hearings resumed on July 13, and were continued on July 16 and 17, 1979, at which time the taking of testimony concluded. Forty-one (41) separately numbered exhibits [SCP-1 through SCP-54, exclusive of SCP-9, 11, 12, 13, 14, 15, 16, 23, 24, 37, 53, 54] were marked and received in evidence.

At the conclusion of the hearings, a schedule for the preparation of briefs was established and agreed to by the parties (10T83-19 to 23). Briefs were filed by the DEP on September 14, 1979, and by the appellants on September 18, 1979. On September 21, 1979, DEP filed a reply to appellants' brief, and on October 2, 1979, appellants filed a reply brief.

III. PRELIMINARY FINDINGS OF FACT

A. Stipulations

The following matters were the subject of stipulations:

Sigmond concerning this deficiency (1T102-6 to 25). It also appears that the appellants failed to submit an environmental impact assessment within the time specified in a DEP request (1T103-15 to 23). Later in November of 1978, certain materials were submitted to the DEP on behalf of the appellants, but the department found them to be inadequate (1T105). Environmental impact statements were not received by the DEP until late in April of 1979 (1T108).

Dr. Buchanan further testified that he had been at both sites, Newark and Carlstadt, on several occasions. These included recent visits in May and late June of 1979 (1T110). In describing the Newark site, 411 Wilson Avenue, the witness indicated the presence of haphazardly stacked, corroded and leaky drums (references to "drums" herein are to 55 gallon metal drums used for the storage of chemicals). The drums and tank trailers were without secondary containment, the purpose of this technique is to preclude penetration of pollutants into the ground water of the State (1T111-1T112). The drums, approximately 3,000 in number, were not segregated by waste type and only about 15% were palletized (2T17-2T13). The purpose of segregation is to prevent the intermixing of reactive chemicals; palletization, that is placing drums on wooden pallets, provides ease in handling and facilitates the isolation and cleanup of spills.

The Carlstadt site was also identified. It is situated on Paterson Plank Road, across from the Meadowlands race track (2T38). According to this witness there were a large number of haphazardly stacked, leaky, spilling, and corroded chemical drums on site during his visits on May 30, 1979 and in June of 1979. There was no palletization and no apparent segregation by waste type (2T38-2T40). The chemicals handled at this location include mixed solvents, such as ketones, alcohols, toluene, some chlorinated residues and phenolic resins (2T42). Dr. Buchanan indicated that the appellants' manner of storage of these chemicals was neither safe or environmentally sound (2T42).

Peach Island Creek, a tidal waterway, classified "TW2" by the DEP, abuts the rear of the property. Dr. Buchanan testified that he observed a petrochemical like material discharging from the bank of the appellants' property into the watercourse (2T54-2T55).

In 1977 the DEP wrote to appellants and requested a cleanup of the sites, but Dr. Buchanan indicated that compliance with these directives has not been forthcoming (2T57 to 2T59). In fact, several of the original offending conditions, particularly with respect to drum storage, persist to the present day.

Prior to April 30, 1979, the date of the expiration of the TOA's for the facilities, the DEP took the position that such temporary authorizations should not be renewed. The reasons for this decision included on-site conditions, the past history of the site and allegations of illegal activities (2T72 - 2T75). The alleged illegal activities are more particularly set forth in a criminal indictment of Scientific Chemical Processing, Inc., Herbert G. Case, Leif Sigmond and Mack Barnes charging them with certain crimes related to their handling of chemical wastes [DEP-8], and according to this witness went to the "reliability" of the operators (2T84). The lateness in filing required documents as well as the failure to cleanup spills were also factors (2T81-2T82). The mailgrams issued by the DEP on April 30, 1979, were intended to advise the appellants that their TOA's had expired on May 1, 1979 (2T91). Dr. Buchanan further stated that as of the date of the hearing, June 28, 1979, it was the DEP's position that new TOA's should not be issued for these operators (2T84).

On cross-examination, Dr. Buchanan stated that the chemical waste field is dynamic and evolving, and that spills and cleanups are industry wide problems (2T99-2T100). At the Newark site, some recent attempts at palletization were observed (2T106). The witness indicated that the preferable way of handling hazardous wastes was resource recovery and recycling, the business conducted by the appellants. There is only one commercial landfill in the entire state that is available for hazardous waste disposal [2T118], and a considerable amount of waste generated in New Jersey is disposed of out-of-state (3T31). On redirect, the witness indicated that a facility known as "Earthline" located in Newark was an alternative to the appellants' operations (4T57).

Dr. Buchanan indicated that 33 TOA's were issued in 1978, and that about 22 were issued for the current year. Of these 22, none had their full engineering designs approved (2T129, 2T138, 2T139). He further indicated that the DEP had not adopted specific administrative rules requiring palletization, stabilization and/or segregation, but that these were imposed as conditions in new TOA's (2T148).

Scientific Chemical Processing, Inc., operates one (1) facility at 216 Paterson Plank Road, in Carlstadt and a second facility at 411 Wilson Avenue, Newark, New Jersey. Energall, Inc. and Presto, Inc. also operate their facilities at 411 Wilson Avenue, Newark, New Jersey (OAL-10).

The appellants handle toxic, flammable and corrosive chemicals (1T64-18 to 19).

Other Undisputed Facts

Counsel for appellants stated that as of June 28, 1979 all four (4) operations were continuing to operate and were ongoing (2T94-14 to 18).

B. Summary and Discussion of Testimony

1. Testimony of Ronald J. Buchanan

Dr. Ronald J. Buchanan was the first witness presented by the DEP. He holds a Bachelor's Degree in chemistry from State College at Millersville, Pennsylvania, a Master's Degree in environmental science and engineering curriculum at Drexel, and a doctorate from Drexel University. Dr. Buchanan's doctorate thesis concerned the treatability of leachates from landfills. His major concentration of study was in environmental chemistry, and he had a minor concentration in engineering unit operations (1T42-2 to 11).

Dr. Buchanan holds the position of Chief of the Bureau of Hazardous and Chemical Wastes, Solid Waste Administration, DEP. His overall responsibilities include the development and implementation of a State Hazardous Waste Management Plan, the administration of a Manifest System for tracking such wastes, and the inspection of facilities and the review of plans to ascertain compliance with applicable statutes and regulations (1T36-3 to 21). This witness was accepted as an expert in environmental engineering and science, and the handling and management of chemicals in the environment (1T45-10 to 19; 1T80-2 to 10).

Dr. Buchanan was observed to be a particularly knowledgeable and forthright witness. His testimony on direct as well as on cross-examination was responsive, informative and highly credible.